

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

MELINDA WILSON

Plaintiff,

V.

Civil Action No. 05-CV-73

AMERICAN POSTAL WORKERS
UNION, DELAWARE AREA LOCAL,
AFL-CIO; and UNITED STATES POSTAL
SERVICE, an independent establishment of
the Executive Branch of the Government
of the United States of America

Defendants.

ANSWER OF THE UNION TO PLAINTIFF'S COMPLAINT

The Wilmington Delaware/Malcolm T. Smith Area Local, American Postal Workers Union, AFL-CIO (“Union”) answers the numbered paragraphs of the Plaintiff’s Complaint as follows:

1. Paragraph 1 contains characterizations of Plaintiff's actions and legal conclusions to which no answer is required, but insofar as an answer is deemed required, the Union denies the allegations contained paragraph 1.

2. The Union denies information or knowledge to form a belief as to the truth or falsity of the allegations contained in the first sentence of paragraph 2, and consequently denies the allegations contained in the first sentence of paragraph 2. The Union avers that Plaintiff was employed by the United States Postal Service (“Postal Service”) in a clerk position at a Postal Service facility in Wilmington, Delaware prior to her termination from the Postal Service.

3. The Union avers that the Postal Service is an independent establishment of the executive branch of the Government of the United States pursuant to 39 U.S.C. § 201 and that the Postal Service is engaged in providing postal services throughout the United States and its Territories. The Union further avers that the Postal Service has established and maintains several mail handling and postal service facilities within the State of Delaware, including several facilities located in Wilmington, Delaware. The Union denies all other allegations in paragraph 3.

4. The Union denies the allegations in paragraph 4, and avers that it is an unincorporated labor organization with its headquarters in Wilmington, Delaware and that it represents postal employees who are postal clerks, maintenance employees and motor vehicle employees in the Wilmington, Delaware area.

5. The Union denies the allegations in paragraph 4, and avers that the American Postal Workers Union, AFL-CIO and the United States Postal Service entered into a collective bargaining agreement effective from November 21, 2000 through November 20, 2003, and extended until November 20, 2005, covering the terms and conditions of employment for all Postal Service employees in the clerk, maintenance and motor vehicle crafts.

6. The Union denies that Article 16 in full only encompasses Section 16.1. The Union admits all other allegations contained in paragraph 6.

7. The Union admits the allegations contained in paragraph 7.

8. The Union admits the allegations contained in paragraph 8.

9. The Union admits the allegations contained in paragraph 9. The Union further avers that on April 6, 2004, Plaintiff told the Union that she had received the Postal Service's Notice of Removal on April 6, 2004.

10. The Union admits the allegations contained in paragraph 10.
11. The Union admits the allegations contained in paragraph 11.
12. The Union denies the allegations contained in paragraph 12.
13. The Union admits the allegations contained in the first sentence of paragraph 13. The Union denies all other allegations contained in paragraph 13.
14. The Union denies the allegations contained in paragraph 14.
15. The Union denies each and every allegation requiring answer not heretofore admitted or denied.
16. The Union further denies that Plaintiff is entitled to the relief sought or to any relief whatsoever.

FIRST AFFIRMATIVE DEFENSE

The Union did not violate any duty owed to the Plaintiff.

SECOND AFFIRMATIVE DEFENSE

Plaintiff is at fault for any failure to file a timely grievance.

THIRD AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the statute of limitations.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff is not entitled to backpay, future earnings, fringe benefits, pension adjustment or compensation for injuries and losses as a matter of law.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff is not entitled to attorney's fees as a matter of law.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff is not entitled to past and future emotional distress as a matter of law.

WHEREFORE, the Wilmington Delaware/Malcolm T. Smith Area Local, American Postal Workers Union, AFL-CIO prays the Court that the Plaintiff have and recover nothing from the Wilmington Delaware/Malcolm T. Smith Area Local, American Postal Workers Union, AFL-CIO, that Plaintiff's Complaint be dismissed, that the costs of this action be taxed against the Plaintiff and that as part of these costs there be included a reasonable attorney's fee for the Wilmington Delaware/Malcolm T. Smith Area Local, American Postal Workers Union, AFL-CIO and that the Court grant such other and further relief as the Court deems just and proper.

LAW OFFICE JOSEPH J. RHOADES

/s/Dale Bowers

Dale Bowers, Esquire (BAR I.D. 3932)

1225 King Street, Suite 1200

Wilmington, DE 19801

(302) 427-9500/FAX (302) 427-9509

dale.bowers@rhoadeslegal.com

Attorneys for the Wilmington Delaware/Malcolm T.
Smith Area Local, American Postal Workers Union,
AFL-CIO

DATE: April 11, 2005

O'DONNELL, SCHWARTZ & ANDERSON, P.C.

/s/Peter J. Leff

Peter J. Leff DC Bar # 457476

1300 L Street NW Suite 1200

Washington, DC 20005-4126

(202)898-1707/FAX(202)682-9276

pleff@odsalaw.com

Attorneys for the Wilmington Delaware/Malcolm
T. Smith Area Local, American
Postal Workers Union, AFL-CIO

Certificate of Service

I hereby certify that on Monday, April 11, 2005, I electronically filed defendants' Answer to plaintiff's Complaint with the Clerk of Court using CM/ECF which will send notification of such filing(s) to the following:

Joseph M. Bernstein
Attorney at Law
800 N. King Street - Suite 302
Wilmington, DE 19801
Jmbern001@comcast.net

I hereby certify that on Monday, April 11, 2005, I caused defendants' Answer to plaintiff's Complaint to be sent US Mail to following(s) to the following:

Patricia Hannigan, Esquire
Assistant United States Attorney
Nemours Building
P.O. Box 2046
Wilmington, DE 19899-2046
Attorney for defendant United States Postal Service

/s/ Dale Bowers
The Law Offices of Joseph J. Rhoades
A. Dale Bowers, Esquire (I.D. 3932)
1225 King Street, 12th Floor
Wilmington, Delaware 19801
302-427-9500
dale.bowers@rhoadeslegal.com
Attorneys for Plaintiff(s)